IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34143 of 2024
Arising Out of PS. Case No.-6 Year-2021 Thana- E.C.I.R (GOVERNMENT OFFICIAL) District- Patna

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Sumit Kumar son of Rajendra Singh R/O- kailash Bhawan, Maula Bag, P.S- Nawada. Distt- Bhojpur

... ... Petitioner/s

Versus

The union of India through the Assistant Director, Enforcement Directorate , Patna Bihar

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Amritya Raj, Adv.
For the Opposite Party/s : Mr. K.N. Singh(A.S.G.)
Mr. Ram Anurag Singh, CGC
Mr. Abhijeet Gautam, JC to ASG

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CORAM: HONOURABLE MR. JUSTICE RUDRA PRAKASH MISHRA
ORAL ORDER

4 30-08-2024 Heard learned counsel for the parties.

2. The petitioner seek bail in connection with Special Trial (PMLA) Case No. 03 of 2023 arising out of ECIR/PTZO/06/2021 dated 16.07.2021 instituted for the offences under Section 44 read with Section 45(1) of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PMLA Act') for commission of offence of money laundering defined under Section 3 of PMLA, 2002.

3. Prosecution case, in brief, is that FIR No. 02 of 2021 dated 02.01.2021 was registered by Gandhi Maidan Police Station against Shubham Gupta in respect of alleged crime of cheating and forgery covered under Sections 419, 420, 467, 468, and 471 of the Indian Penal Code, for making an attempt to

transfer a sum of Rs. 11,73,12,721/- from Account Number-1612046806 of CALA CUM DLAO Patna and PD NHAI PIU Gaya NH-83, maintained with Kotak Mahindra Bank, Exhibition Road Branch, Patna to the account of B.S. Enterprises held with ICICI Bank, Boring Road Branch, Patna by using RTGS forms and letters with forged/fake signatures. A charge-sheet No. 101 of 2021 dated 03.04.2021 was filed by Gandhi Maidan P.S. against Shubham Gupta in this case and further a supplementary charge-sheet no. 106/2021 dated 21.04.2021 was also filed by Gandhi Maidan P.S. against Sandeep Kumar Gupta, Sarukh @ Riju and Sumit Kumar. It is alleged that in course of further investigation conducted by Gandhi Maidan P.S., it was found that total of Rs. 31,92,70,129/- (thirty one crores ninety two lacs seventy thousand one hundred and twenty nine) was fraudulently transferred from the account of CALA cum DLAO to the account of different entities/persons using forged documents/fake signatures.

4. Learned counsel appearing on behalf of the petitioner submits that the petitioner is quite innocent and has committed no offence as alleged in the complaint filed by the E.D. and the charge-sheet filed by the E.D. has failed to

establish the link of trial of money with the petitioner. The E.D. has also not brought on record anything suggesting the role of the petitioner in syphoning of the funds. He further submits the petitioner was also arrested by the Gandhi Maidan police but, subsequently, was enlarged on bail by the order of the Hon'ble Apex Court but, the E.D. has unnecessarily arrested the petitioner depiste the fact that he was regularly appearing before the Assistant Director, Enforcement Directorate, Patna. He further submits that on 10.07.2023, the petitioner had gone to join the investigation to Assistant Director but, was arrested by E.D. which was totally unwarranted and uncalled for. The charge-sheet has been submitted but, the charge has not been framed as yet. He again points out that the E.D. is deliberately not taking any steps to arrest the real accused persons whose details are already with them. A bare perusal of the charge-sheet shows that not even a single penny has been recovered from the possession of the petitioner. Even the bank statements produced by the accused during investigation does not show any siphoning of the amount in question. The petitioner is in custody since 11.07.2023 and has one criminal antecedent being Gandhi Maidan P.S. Case No. 02 of 2021 instituted on 02.01.2021.

5. The Enforcement Department has filed its detailed

counter affidavit in the matter. Dr. K.N. Singh, learned Additional Solicitor General appearing on behalf of the E.D., referring to the counter affidavit, has submitted that on the basis of the FIR No. 02/2021 dated 02.01.2021 of Gandhi Maidan P.S., Patna, an ECIR No. PTZO/06/2021 dated 16.07.2021 was recorded by E.D., as Sections 419, 420, 467 and 471 of the I.P.C. are scheduled offence under the Prevention of Money Laundering Act (PMLA), 2002. He further submits that in course of investigation under the PMLA, it has been revealed that the petitioner was the mastermind of conspiracy and it was he who conceptualized the whole scheme of generating and subsequent layering & laundering of proceeds of crime to the tune of Rs. 31.93 crores in association with his other associates namely Shashikant Kumar and other persons. He further submits that in course of statement u/s 50(3) of the PMLA, the petitioner/Sumit Kumar has admitted about his involvement in fraudulent transactions amounting to Rs. 31.93 crore (approx) executed from the bank account of CALA cum DLAO and also revealed the name of his associates who assisted him in execution of these fraudulent transactions. It has further been submitted that in course of statement u/s 50(3) of PMLA, 2002, the petitioner has further admitted that he had dues of Rs.2

crores from Shashikant Kumar which was his share in the fraudulent transactions executed from the Bank Account No.-1612046806 of CALA Cum DLAO, Patna & PD NHAI PIU, Gaya and Account No.-7812084686 of CALA Cum DLAO, Patna & PD NHAI PIU, Begusarai but, when he was arrested in FIR No.02/2021 dated 02.01.2021 of Gandhi Maidan P.S., Patna and was sent into judicial custody, he sent his brother Santosh Kumar Singh to Shashikant Kumar to receive his share amounting to Rs.2.00 crores from him but, out of Rs. 2.00 crores, Shashikant Kumar gave only Rs.50 lakh (in cash) to his brother Santosh Kumar Singh. Further, as per the statement of the petitioner, out of Rs. 50 lakh, which the brother of petitioner received, Rs. 45 lakh was used by Santosh Kumar Singh for investment in FD (Fixed Deposit) in the name of their mother Smt. Asha Devi and father Rajendra Singh in HDFC Bank, Raja Bazar Branch, Patna. Further, in the statement recorded on 27.07.2023 u/s 50 of PMLA, he has admitted that when he was released on regular bail from Adarsh Kendriya Kara, Beur, Patna in July, 2022, his mother Smt. Asha Devi and father Rajendra Singh prematurely en-cashed the FD amounting to Rs.45 lakh, withdrew the amount in cash and gave it to the petitioner. The above transactions viz, creation/encashment of

FDRs got corroborated with the analysis of the documents obtained u/s 54 of PMLA from the concerned banks.

6. This Court would first deal with statutory provisions with regard to consideration of bail petition under the P.M.L.A. Act. It would be relevant to quote Sections 2(1)(p), 3, 4, 24 and 45(1)(i) and (ii) which are as under:

> *"2(1)(p) "money-laundering" has the meaning assigned to it in section 3;*
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> *3.Offence of money-laundering.-Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.*
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> *4. Punishment for money-laundering.- Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.*
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> *24. Burden of Proof- In any proceeding relating to proceeds of crime under this Act-*
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> *(a) in the case of a person charged with the offence of money-laundering under Section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and*
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> *(b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering.*
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> *45. Offences to be cognizable and non-bailable.- (I) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused*

of an offence under this Act shall be released on bailor on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person who is under the age of sixteen years or is a woman or sick or infirm [or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees] may be released on bail, if the Special Court so directs:

7. The PMLA Act has been enacted to prevent money laundering and to prevent and to provide for confiscation of property derived from, or involved, in money laundering and for the matters connected therewith and incidental thereto. So far Section 24 of PMLA Act regarding burden of proof is concerned, from perusal of the complaint and the material on record, it appears that the accused-petitioner has failed to disclose facts showing his non-involvement in any process or activity with respect to the proceeds of crime and has also not been able to rebut legal presumption invoked in Section 24 of the PMLA. In so far as Section 45 of PMLA is concerned, it is manifest that in order to obtain bail, the accused-petitioner is saddled with the responsibility to demonstrate before the Court that he is not *prima facie* guilty of such offence. But from the

materials available on record and considering the rival submissions made on behalf of both the parties, this Court is of the view that the accused-petitioner has not been able to show that *prima facie* he is not guilty of the offence alleged against him. Thus, it appears that the petitioner conceptualized the whole scheme of generating and subsequent layering & laundering of proceeds of crime to the tune of Rs. 31.93 crores in association with his other associates. In course of statement u/s 50(3) of the PMLA, the petitioner has also admitted about his invovlement in the fradulent transactions amount Rs. 31.93 crore (approx) executed from the bank account of CALA cum DLAO and also revealed the name of his associates who assisted him in execution of these fradulent transactions. The instant case, which is evident from the records, involves allegations pertaining to money-laundering of several crores of rupees by the accused persons. Section 45 makes the offences under P.M.L.A. to be cognizable and non-bailable. As regards the twin conditions for grant of bail contained in Section 45(1) of the PMLA, it has been held by the Hon'ble Apex Court in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India & Ors.*** reported in ***2022 SCC OnLine SC 929*** that the underlying principles and rigours of Section 45 of the Act must come into play and without exceptions ought to be reckoned to uphold the objectives of the Act, which is a special legislation providing for stringent regulatory measures for combating the menace of money laundering.

8. Under the facts and circumstances, from perusal of records, it appears that there is enough material on the record to show that the petitioner was actively involved in acquisition, disposal and transfer of proceeds of crime. Further from perusal of the records, it appears that the allegation made against the petitioner is grave and serious in nature. Further, it appears that accused-petitioner has direct involvement in receipt of proceeds of crime and further layering and laundering of proceeds of crime which make him liable for the offence of money laundering punishable under Section 4 of the PMLA.

9. Considering the above circumstances of the case and *prima facie* reading of the material placed on record and considering the parameters of Section 45(1) of PMLA as well as the gravity of the offence, it appears that the petitioner is involved in the alleged concealment, possession and using the properties acquired out of proceeds of crime and projected the same as tainted. As such, this Court is not inclined to grant bail to the petitioner. Hence, the bail of the petitioner is hereby

rejected. However, the above observations are only tentative in nature only for the disposal of the bail application.

10. Let the trial be expedited expeditiously.

(Rudra Prakash Mishra, J)

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